

* * * * *

SALATHIA BUTTS,

Appellant,

JAMES A. JUNG, Executive Secretary,
Higher Educational Aids Board,

Respondent.

Case No. 74-74

* * * * *



OPINION

AND

ORDER

Before: JULIAN, Chairperson, SERPE, STEININGER, and WILSON, Board Members

OPINION

I. Nature of the Appeal

Appellant appealed a three day suspension, alleging that it was not based on just cause. Respondent contends that the suspension was an appropriate disciplinary action because Appellant was repeatedly late for work.

II. Facts

Appellant is a permanent employee working for the Higher Educational Aids Board. His position is presently classified as Area Service Specialist II.

Appellant's working hours were 8 a.m. to 4:45 p.m. from September through May and 8:30 a.m. to 5:15 p.m. from June through August. In June, 1973 Paul T. Spraggins, Chief Administrative Officer for the Higher Educational Aids Board, Milwaukee office, announced a policy whereby an employee was required to call into the office within fifteen minutes of the time he was due if he were going to be late or absent.

A memorandum dated July 11, 1973 (Respondent's Exhibit #37) from Mr. Spraggins to Appellant clearly states the above "15 minute" rule. A second memorandum dated July 17, 1973 sent to Mark Braunhut, then Personnel Director of the Higher Educational Aids Board, from Mr. Spraggins repeated the policy. A copy of this memorandum was sent to Appellant. Another memorandum dated

January 23, 1974 (Respondent's Exhibit #59) from Nadine Lee, then Counseling Supervisor, Higher Educational Aids Board, and Appellant's supervisor, to Appellant again reiterated this policy. There was some question whether his last memorandum was dated January 23, 1974 or 1973. Appellant claimed to have received it January 23, 1973.

In a letter dated July 18, 1974, Appellant received notice of his three day suspension starting July 16, 1974. The suspension letter stated in part:

Pursuant to the provisions of Section 16.28(1) Wisconsin Statutes, you are hereby notified that the reasons for this action are:

According to your supervisor Carl Rucker,

- 1 - On June 25, 1974 you arrived at work at 8:50 a.m. and signed in as of 8:30 a.m., thus knowingly taking pay for 20 minutes of time you were not there.
- 2 - In the month of June, 1974, you have reported late to work on June 3, 4, 19, 21, 25, and 27, and have failed to charge your lateness to any leave account.
- 3 - Since January 1, 1974 you have reported to work late on 33 separate days and have failed to notify your office as required by work rules, that you would be more than 15 minutes late reporting to your work station.

You were aware of the rules of the Department and Division covering the violation mentioned above because you were warned about them and counseled on them on August 22, 1973 by Paul Spraggins, and on June 23, 1974¹ by Nadine Lee.

Appellant appealed the three day suspension. His letter of appeal was received by this Board's office on July 23, 1974.

There were thirty seven Daily Time Sheets (hereinafter referred to as D.T.S.) with respective Daily Time Memoranda (hereinafter referred to as D.T.M.) attached admitted into evidence. (See Respondent's Exhibits Nos. 1 - 36. The D.T.S. and D.T.M. from January 17 and January 23, 1974 were both marked Respondent's Exhibit #6.) These sheets covered various work days from

1. This date is incorrect. The memorandum was dated January 23, 1974. See November 4, 1974 Hearing Transcript, p. 23 and Respondent's Exhibit #39.

January 2, 1974 through July 5, 1974.

The D.T.S. had a list of all the employees' names and four columns labeled: Actual Time In, Approved Time In, Actual Time Out, and Approved Time Out. Employees were required to fill in opposite their names the time they came to work. Generally about fifteen minutes after the 8:00 or 8:30 a.m. starting time, Lady Campbell, Administrative Secretary, Higher Educational Aids Board, who was in charge of handling certain personnel matters including time sheets, would list those employees who were not at work on the D.T.M.. If she determined by checking with the Counseling Supervisor and other secretaries that a person had not shown up yet and had not called, she placed a question mark after his name on the D.T.M.. If a call had been received by the office, she wrote the reason for the absence. The reason could be illness, vacation, attendance at a work related meeting or simply tardiness. The D.T.M. was then given to the Counseling Supervisor for a final checking over because often employees called him regarding their lateness. Finally, the D.T.M. was given to Mr. Spraggins to whom it was addressed. Ms. Lee was Counseling Supervisor until May, 1974. After that she was transferred to the Talent Incentive Program as its coordinator. Carl Rucker then became Counseling Supervisor and Appellant's Supervisor.

III. Conclusions

The Personnel Board has jurisdiction to hear appeals from suspension actions under Section 16.05(1)(e), Wis. Stats. The appeal was timely filed within the fifteen day limit under Section 16.05(2), Wis. Stats.

Appellant Was Suspended For Just Cause

The charges listed in the suspension letter from Respondent are cumulative. Items 1 and 2 listed specific dates on which Appellant was late

and failed to charge such lateness to some sort of approved leave (for example, vacation, personal holiday, sick leave or compensatory time off). Item 3 stated that there were thirty three times that Appellant violated the work rule requiring an employee to call his office if he were going to be more than fifteen minutes late to work. We find based on these charges that Appellant was properly suspended.

The first charge concerned June 25, 1974. On that date Appellant signed in the D.T.S. as if he had arrived at 8:30 a.m.. However, the D.T.M. which Ms. Campbell filled out at 8:45 a.m. indicates that Appellant had not yet arrived.

Appellant and Mr. Rucker do not agree on the facts underlying the first charge. We find Mr. Rucker's statement of what happened to be the more accurate recital. Mr. Rucker testified that he was standing near the sign-in sheet when Appellant arrived on the morning in question. Further, he stated that he verified the time as 8:50 a.m. by having one of the secretaries call "time" and that he then spoke with Appellant regarding his tardiness. Both Mr. Rucker and Appellant testified that Appellant claimed that he was not late but that the clock was wrong. (October 15, 1974 Hearing Transcript, pp. 70-73.)

Appellant testified first that he saw Mr. Rucker at the front desk near the sign-in sheet but did not talk to him then about the starting time but did so later. (November 4, 1974 Hearing Transcript, p. 64.) Shortly after this testimony, Appellant contradicted himself by testifying that Mr. Rucker was not standing near the sign-out sheet but was in his office which is apparently away from the front desk. (November 4, 1974 Hearing Transcript, p. 66.) To give even further credence to Mr. Rucker's testimony, a memorandum was written by him that same day within an hour of the incident. (Respondent's Exhibit No. 47.) By this memorandum he requested

that Lady Campbell explain the discrepancy between the time Appellant arrived and the time he wrote in as arriving.

We, therefore, conclude that Appellant arrived at work at 8:50 a.m. after Ms. Campbell filled out the D.T.M. form. Further, we conclude that Appellant filled in the D.T.S. form as if he had arrived at work at 8:30 a.m..

The second charge involves six specific dates in June, 1974. It is alleged Appellant arrived late but failed to charge the time to any leave account such as vacation, personal holiday, leave without pay, or sick leave. For only June 27, 1974 there was no evidence supporting the charge. The D.T.M. of that date evidenced "Everyone here." (Respondent's Exhibit #35.) The D.T.M. forms for the other dates, June 3, 4, 19, 21, and 25, all showed that Appellant was not present at work by the time the memoranda were filled out. June 25, 1974 was discussed above. We held that Appellant did walk in late and still signed as if he had arrived on time.

On June 3, 1974 Appellant was required to appear in court on a personal matter. However, before he appeared in court, he went to the County Work Training Project, which is located in the basement of the Courthouse, to look for summer job opportunities for the people he counsels. He spent about an hour (8 a.m. to 9 a.m.) doing this and then reported to the Sheriff's Department on personal business. This took about half an hour. Then he appeared in court again on personal business for about an hour. The total amount of time spent on personal business was at least one and a half hours. Eventually Appellant reported back to work. He signed in as if he had arrived at 8 a.m.. Appellant contends that after he told

him why he was late, Mr. Rucker, his supervisor, told him to sign in at 8:30 a.m.. Appellant still signed in at 8 a.m.. (October 15, 1974 Hearing Transcript, pp. 20, 24.) Mr. Rucker, however, testified that although on June 3, 1974 he learned of the court appearance, he never spoke to Appellant about it until about June 28. (October 15, 1974 Hearing Transcript, p. 30.)

Regardless of whether Appellant spoke to Mr. Rucker, the fact remains that he signed in at 8 a.m. so that the D.T.S. reflected that he worked an extra half hour (8 a.m. to 5:15 p.m.) when, in fact, he worked at least a half hour less than the normal eight hours. Furthermore, Appellant knew before June 3, 1974 that he was going to be at the Courthouse on personal business. Even assuming he did speak with Mr. Rucker, he chose not to do so until after he reported to work on June 3. If an employee must be absent from the office for nonwork-related purposes, then the absence ought to be excused ahead of time if at all possible. Appellant could easily have told Mr. Rucker in advance that he would not be in and the reasons therefor. Finally, he did not call in by 8:45 a.m. to inform that office that he would not be in until later. There was an established office policy that if an employee would not be in within fifteen minutes after the 8 or 8:30 a.m. starting time that he was to call in to let the office know. According to Appellant's testimony, he was

not in the Sheriff's custody until 9 a.m.. Therefore, he should have had ample opportunity to call the office by 8:45 a.m..

For the dates of June 4, 19, and 21, 1974, the D.T.S. show that Appellant signed in as if he had arrived on time. However, when Ms. Campbell filled out the D.T.M. at 8:44 a.m., 8:43 a.m. and 8:45 a.m. respectively for those days, she found that Appellant had neither arrived at nor called into the office. His name appeared on the D.T.M. for those days with only a question mark after his name.

Although the timekeeping method may not be the most accurate one that could be developed, we conclude that it is sufficiently accurate to uncover the type of tardiness that Appellant practices. The routine set up for the employees is well established. Each employee must sign in when he arrives at work. The D.T.S. is apparently available at a desk which is near the entrance to the office. Ms. Campbell picks the sheet up about fifteen minutes after everyone is due. She lists the names of employees who have not arrived on the D.T.M.. She checks around the office to find out if anyone has heard from a particular employee who has not signed in yet. If the person called in, that information is placed next to his name. If no one has heard from the employee, a question mark is placed next to his name. The D.T.M. then goes to the Counseling Supervisor who checks over the list since some employees call him directly. Finally, the list is given to Paul Spraggins, Chief Administrative Officer for the Higher Educational Aids Board.

The above procedure may not be fail-safe. But it is sufficiently detailed so that inaccuracies would be minimal.

The third charge is cumulative in that it is alleged that Appellant had been late over a six month period thirty-three days including the above dates. Appellant's name appeared on thirty-six out of the thirty-seven D.T.M. admitted into evidence. Tallying the D.T.S. and D.T.M., we found that Appellant signed in

late nine times without any excuse and without calling in; Appellant signed in late six times after calling in that he would be late (no specific excuse given); Appellant signed in on time or within the "grace period" nine times but the D.T.M. showed that he was late; Appellant signed in late nine times with a business or compensatory time off excuse but according to the D.T.M. no call was made; Appellant signed in late twice with a work related excuse after calling the office that he would be late; and finally, Appellant signed in on time and the D.T.M. showed him to be on time only once.

The above record is not very good. Taking an average of twenty work days per month, there were 120 days involved in the six month period covered by the suspension charges. Appellant was clearly late without excuse sixteen days. On another nine days the D.T.M. shows that Appellant was late. Finally, there were nine other days that Appellant was late because of some work related excuse² but failed to call the office.

The policy of calling into the office within fifteen minutes of the scheduled starting time was well established. Appellant had to have been aware of this policy for nearly a year before the disciplinary action was taken. Appellant failed to comply with this policy at least nineteen times in six months.

Appellant contends that there are several reasons his work schedule appears so poor. He claims that the records were inaccurately kept, that Ms. Campbell did not see him, that the office clock was off, that he took compensatory time off, or that on occasion he was delayed because he met a client on the way to work. We conclude that none of these reasons are valid. As stated above, a more accurate timekeeping system could probably be developed but the one used was adequate. Ms. Campbell's office was directly across from Appellant's so she was more than likely to see him. Furthermore, if she missed him, someone

2. There was no evidence introduced to contradict Appellant's claims on the D.T.S. as to where he had been or really whether the compensatory time off was properly taken except that it was established that on June 3, 1974 although Appellant was at the Courthouse, part of that time was spent on personal matters.

ought to have seen him within the first fifteen minutes of work. In reviewing the D.T.S. it appears that a majority of people appeared on time for work regardless of the accuracy of the clock. There were only two days for which Appellant took compensatory time off (May 22 and 23, 1974). If he took it for other days, it should have been so marked. There was no showing even that he was entitled to compensatory time off. Finally, if he were delayed because he met a client or because of some other work related reason, he could have so indicated on the time sheet.

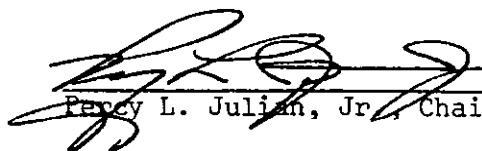
Appellant's final contention is that there is a "fifteen minute grace period." He contends that an employee can arrive at anytime during this period and sign in as if he were on time. This is at best a misinterpretation of the various memoranda Appellant received from Mr. Rucker and Mr. Spraggins. Nowhere in those memoranda is such a policy stated. The "fifteen minute" policy was clearly defined so that the employee who was to be late or to be elsewhere than at the office was to call in within fifteen minutes. Quite obviously an eight hour work day was still required. Equally clear is that an employee was to sign in at the time he actually arrived.

Therefore, we conclude that Appellant's work record with respect to his tardiness sufficiently warranted the action taken against him. We do not pass on Appellant's performance record in other areas which may very well be exemplary.

ORDER

IT IS HEREBY ORDERED that Respondent's action is affirmed.

Dated September 25, 1975. STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson